

plant. The term shall include such a person with respect to milk diverted to a pool plant from an other order plant (unless designated for Class III use) during any month in which the quantity diverted is greater than the quantity of milk physically received from such person at the plant from which diverted and such milk is exempt from the pooling provisions of the other order.

§ 1040.13 Producer milk.

Producer milk shall be the skim milk and butterfat in milk from producers that is:

- (a) Received at a pool plant directly from a producer excluding such milk that is diverted from another pool plant;
- (b) Received by a handler described in § 1040.9(c);
- (c) Diverted by the operator of a pool plant to another pool plant; and
- (d) Diverted by the operator of a pool plant or by a handler described in § 1040.9(b) to a nonpool plant, other than a producer-handler, subject to the following conditions:
 - (1) During each of the months of September through February, not less than one day's production of a producer must be physically received at a pool plant;
 - (2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of September through February of the total quantity of producer milk for which it is the handler;
 - (3) Any milk diverted in excess of the limits described in paragraph (d)(2) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the total milk diverted on the last day of the month, then the second-to-the-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and
 - (4) Milk which is subject to pooling under another order, shall not be producer milk.

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§ 1040.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

- (a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1040.9(c), or pool plants;
- (b) Receipts in packaged form from other plants of products specified in § 1040.40(b)(1);
- (c) Products (other than fluid milk products and products specified in § 1040.40(b)(1)), from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and
- (d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1040.40(b)(1) for which the handler fails to establish disposition.

§ 1040.15 Fluid milk product.

- (a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.
- (b) The term *fluid milk product* shall not include:
 - (1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and
 - (2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product